BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF EP ENERGY E&P COMPANY, L.P. FOR AN ORDER POOLING ALL INTERESTS, INCLUDING THE COMPULSORY POOLING OF THE INTERESTS OF ARGO ENERGY PARTNERS, LTD., DUSTY SANDERSON, HUNT OIL COMPANY, KKREP, LLC, AND J.P. FURLONG CO., IN THE DRILLING UNIT ESTABLISHED FOR THE PRODUCTION OF OIL, GAS AND ASSOCIATED HYDROCARBONS FROM THE LOWER GREEN RIVER-WASATCH FORMATIONS COMPRISED OF ALL OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 5 WEST, U.S.M., DUCHESNE COUNTY, UTAH	**MEMORANDUM IN OPPOSITION TO J.P. FURLONG CO.'S MOTION FOR CONTINUANCE** Docket No. 2015-013 Cause No. 139-130

EP Energy E&P Company, L.P. ("EPE"), acting by and through its attorneys, MacDonald & Miller Mineral Legal Services, PLLC, and pursuant to Utah Admin. Code Rule R641-105-300, hereby respectfully submits this Memorandum in Opposition to J.P. Furlong Co.'s ("Furlong's") Motion for Continuance filed with the Board of Oil, Gas and Mining on April 8, 2015.

INTRODUCTION

Furlong, the lessee of a mere 0.77 net mineral acres, or 0.120608% of the total working interest, in the drilling unit at issue in this Cause, seeks a continuance based on three alleged factors: (1) its primary witnesses, Tim Furlong and Ramona Garcia-

Furlong, have to be present for a hearing before the North Dakota Industrial Commission ("NDIC") on April 23, 2015, and due to travel logistics, state they consequently will not be able to attend the hearing in this Cause scheduled the day before (April 22, 2015) in Moab; (2) a continuance will allegedly facilitate further negotiations between the parties to resolve, or at least minimize, their differences over the terms of the Joint Operating Agreement ("JOA") to govern operation of the drilling unit at issue; and (3) additional time and expense are required to be spent due to the hearing being scheduled in Moab instead of Salt Lake City. However, for the reasons outlined below, none of those factors, especially given the resulting hardship upon EPE, justify the granting of a continuance. EPE therefore respectfully requests the Board to deny Furlong's Motion and allow the hearing in this Cause to proceed as scheduled.

ARGUMENT

I. EPE WILL INCUR SUBSTANTIAL FINANCIAL HARDSHIP IF A FORCE POOLING ORDER IS NOT ISSUED ON OR BEFORE MAY 9, 2015.

A. A force pooling order is immediately required to allow a communitization agreement to be filed.

As outlined in EPE's Request for Agency Action filed in this Cause (*see* ¶ 14), because of the Ute Tribal acreage included within the drilling unit (199.58 acres, constituting 31.231222% of the drilling unit), a communitization agreement must be filed and approved to effectuate the "pooling" of said Tribal acreage and the lease covering the

same with the other leases and interests in the drilling unit. See 25 CFR §211.28. The Bureau of Indian Affairs ("BIA") Fluid Mineral Estate Procedural Handbook (July 2012) expressly provides the communitization agreement must be filed with both the BIA and Bureau of Land Management ("BLM"), as well as the Tribe, but that the BIA provides final approval (*see* Sec. 3.7). The BLM's role is to provide the recommendation for approval to the BIA in situations involving Federal or fee lands within the spaced area, as is the situation with the drilling unit at issue in this Cause (*see* Sec. 4.7).

The Utah BLM Operations Handbook for Communitization Agreement Submittals[1], on Page 1 under the subtitle "Execution of the Agreement, Subparagraph B, expressly provides:

> All working interest owners of non-Federal leases must execute the agreement, unless such interests have been effectively integrated of [*sic*, or] pooled by State order (an order that involuntarily "force-pools" all interests) or other pooling agreement. Copies of the State order or pooling agreement should be furnished and made a part of the agreement if such interest owners do not execute the agreement.

See also BLM Communitization Manual 3160-9, Section 1.11(f) (1988).[2] Furthermore, whether or not formally adopted by the BIA, it has been the experience of other operators in the Uinta Basin that the BIA, as a matter of practice, will not approve a

[1] Available on-line at http://www.blm.gov/style/medialib/blm/ut/lands_and_minerals/oil_and_gas.Par.27843.File.dat/CA-HANDBOOK.pdf)

[2] Available on-line at http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/reservoir_management/communitization.Par10316.File.dat/3160-9Man.pdf

communitization agreement without all working interest owners' signatures or a force pooling order, just as required under the quoted BLM guidelines (*see* Exhibit "A;" *see also, e.g.,* Testimony of David Watts, Bill Barrett Corporation, in the Board Hearing held on January 28, 2015, Docket No. 2015-003; Cause No. 139-128). Therefore, whether expressly or by practice, a force pooling order from the Board is required to obtain approval of a communitization agreement covering the drilling unit at issue.

B. The filing of a communitization agreement is a requisite for EPE to drill a well on the Tribal acreage.

As outlined in the Affidavit of John DeWitt attached hereto as Exhibit "A" and by this reference incorporated herein, a communitization agreement (based on the entry of a force pooling order; *see* above) must be submitted to the BIA and BLM prior to EPE commencing drilling operations of the next well to be drilled on the drilling unit at issue, and that well is scheduled to be spud sometime prior to the following Force Pooling Hearing on May 27, 2015. Specifically, EPE has scheduled the "Shepherd 5-2C5" Well, in which Furlong has an interest, to be drilled on the Tribal tract, and spud as soon as the drilling of the Winslow 4-1C5 Well has been completed and the rig moved on site (anticipated to be on or before May 9, 2015). Due to the recent economic downturn in oil prices and the advanced preparation required to build a rig schedule, EPE anticipates the contract for this rig will expire after the next three wells are drilled: the Winslow 4-1C5, Shepherd 5-2C5 and Circle B 2-3C5 Wells. The Circle B 2-3C5 Well has material title

issues associated with it that will require several more weeks for curative efforts and prohibit the rig from moving to that site before the Shepard 5-2C5 Well. This is why EPE filed the Request for Agency Action in this Cause in March, to be heard in April.

C. **EPE will incur substantial financial consequences if the Shepard 5-2C5 Well is not commenced upon completion of the Winslow 4-1C5 Well.**

If there is any delay in receiving the force pooling order (resulting in delays in the filing of the communitization agreement), there will be delay in commencement of the Shepard 5-2C5 Well. As a result of such delay, EPE would be forced to lay the rig down, costing EPE an average of $15,000 per day under its rig contract. In addition to the penalties incurred for idling the rig, EPE would need to find a location suitable to store the rig. Assuming EPE is able to find a suitable location, the additional costs and delays incurred as a result of the potential demobilization and remobilization are approximately $220,000 ($110,000 per move) and a minimum of 12 days (six (6) days to demobilize to the neutral location and six (6) days to remobilize at the drilling site), respectively. Thus, with a minimum 12 day delay, the total combined expense to EPE (and the non-operators) will be at a minimum $400,000. See Exhibit "A." Thus it is crucial for the hearing to go forward on April 22, 2015 as scheduled to avoid those substantial costs.

II. FURLONG HAS FAILED TO SHOW GOOD CAUSE FOR A CONTINUANCE.

While Furlong indicates its two primary witnesses must attend an NDIC hearing on April 23, 2015, it fails to address: (1) why the NDIC hearing is more important than the hearing in this Cause; (2) whether it ever sought a continuance in the NDIC matter and/or why a continuance in that matter is not possible; and (3) why, under the circumstances alleged, its witnesses could not participate electronically in the April 22, 2015 hearing pursuant to Utah Admin. Code Rule R641-100-630.

The NDIC is the North Dakota equivalent of the Board. Furlong does not identify the substance of the hearing it has before the NDIC. Given both are oil and gas administrative matters, why should that hearing take precedence over the hearing in this Cause? For the reasons outlined under Part I above, it is crucial for EPE to have the force pooling matter resolved on April 22nd. Without a showing why the NDIC hearing should be given priority, a continuance is not warranted.

Along those same lines, Furlong has not indicated if it even sought a continuance of the NDIC hearing so as to allow its witnesses to appear at the hearing in this Cause. If it did not, should the burden be upon it to first seek one? And if one were sought but denied, what are the grounds for such denial? Again, a continuance in this matter is not justified without requiring Furlong to first seek one in the NDIC matter.

Given it's merely a travel logistics issue rather than an actual concurrent hearing conflict, as an accommodating alternative, Furlong's witnesses should have no excuse as to why they cannot participate electronically pursuant to Utah Admin. Code Rule R641-100-630. EPE has no objection to such electronic participation, especially when it appears to provide an accommodation to allow Furlong's witnesses to still participate in both hearings.

Furlong's other alleged justifications simply have no merit. The parties have been trying to negotiate the terms of the JOA for over five months. Those on-going negotiations were in large part why EPE waited until March (being the last possible filing date to meet the operational requirements outlined in Part I above) to file its Request. Given that history, an additional thirty days, at least from EPE's standpoint, will not resolve the fundamental disagreements between the parties reflected in EPE's Exhibits "R" through "T" on file in this matter. That said, and as has been repeatedly stated by EPE to Furlong, EPE remains willing to negotiate JOA terms in good faith. Additionally, Furlong's claims that time, expense and efficiency will be saved by not holding a hearing in Moab is self-serving at best. EPE will incur the same costs and expense of travel for its witnesses and counsel to go to Moab as will Furlong. However, it is more than willing to do so given the circumstances outlined in Part I above and in Mr. DeWitt's Affidavit.

CONCLUSION

As outlined above, Furlong simply has not justified the granting of a continuance in this matter or established that more harm will result to it than to EPE if one is not granted. Consequently, EPE respectfully requests that the Board deny Furlong's Motion for a Continuance and to allow the hearing in this Cause to proceed as scheduled on April 22, 2015. Alternatively, the Board should require Furlong to show cause why electronic participation pursuant to Utah Admin. Code Rule R641-100-630 is not feasible.

Dated this 13th day of April, 2015.

MACDONALD & MILLER
MINERAL LEGAL SERVICES, PLLC

By: _____
Frederick M. MacDonald, Esq.

Attorneys for Petitioner EP Energy E&P Company, L.P.

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BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF EP ENERGY E&P COMPANY, L.P. FOR AN ORDER POOLING ALL INTERESTS, INCLUDING THE COMPULSORY POOLING OF THE INTERESTS OF ARGO ENERGY PARTNERS, LTD., DUSTY SANDERSON, HUNT OIL COMPANY, KKREP, LLC, AND J.P. FURLONG CO., IN THE DRILLING UNIT ESTABLISHED FOR THE PRODUCTION OF OIL, GAS AND ASSOCIATED HYDROCARBONS FROM THE LOWER GREEN RIVER-WASATCH FORMATIONS COMPRISED OF ALL OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 5 WEST, U.S.M., DUCHESNE COUNTY, UTAH	**EXHIBIT "A" TO MEMORANDUM IN OPPOSITION TO J.P. FURLONG CO.'S MOTION FOR CONTINUANCE** **AFFIDAVIT OF JOHN D. DEWITT, JR.** Docket No. 2015-013 Cause No. 139-130

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

JOHN D. DEWITT, JR., being first duly sworn upon his oath, deposes and says:

1. I am a landman for EP Energy E&P Company, L.P. ("EPE"), Petitioner in the captioned Cause, am over the age of eighteen (18) years, and have first-hand knowledge of, and am otherwise competent to address, the matters stated herein.

2. I have been working as an in-house landman for over five (5) years and the greater Altamont field for approximately two (2) years, and in particular the drilling unit at issue in this Cause.

3. It has been my understanding, with respect to other operators in the Uinta Basin which operate on behalf of EPE, that the Bureau of Indian Affairs, Uintah and Ouray Agency, will not approve any communitization agreement communitizing a Tribal or Allotted Lease with fee leases within a drilling unit established by the Utah Board of Oil, Gas and Mining (the "Board") without all working interest owners being signatories or without a force pooling order issued by the Board.

4. Due to the recent economic downturn, EPE will only be drilling three additional wells utilizing the same contracted rig in the Altamont field during 2015: the Winslow 4-1C5 Well (set to spud on April 22, 2015), the Shepard 5-2C5 Well (location currently being constructed; anticipated spud date of May 9, 2015) which will be drilled on the Fee surface and Tribal mineral acreage included within the drilling unit at issue in this Cause, and the Circle B 2-3C5 Well (pending title curative). The rig is anticipated to be released from the Winslow 4-1C5 well site on or about May 3, 2015 (requiring 6 days to demobilize and remobilize the drilling rig at the Shepard 5-2C5) to remain on schedule to spud the Shepard 5-2C5 on or about May 9, 2015. The Circle B 2-3C5 Well has material title issues associated with it, requiring it to be the last of the three wells to be drilled. EPE cannot assume the risk of drilling the Shepard 5-2C5 Well on the Tribal acreage without properly submitting the communitization agreement to communitize the Tribal acreage with the other leases in the drilling unit at issue in this Cause.

5. If a communitization agreement is not at least filed with the BIA by the time the rig is ready to move on-site to the Shepard 5-2C5 Well, there is a high probability EPE will need to lay down the rig. Under EPE's rig contract, EPE would incur a $15,000 per day stand by charge. In addition, EPE would need to find a suitable location to store the rig. Assuming EPE is able to find a suitable location, the additional costs and delays incurred as a result of demobilization and remobilization are approximately $220,000 ($110,000/per move) and a minimum of twelve (12) days (6 days to demobilize and stack rig at the neutral location and 6 days to remobilize at the drilling site), respectively. The total combined costs of these delays would be approximately $400,000 ($180,000 in idle penalties (12 Days x $15,000) plus $220,000 in demobilization/remobilization costs).

Dated this 10th day of April, 2015.

JOHN DEWITT, JR.

Subscribed and sworn to before me this 10th day of April, 2015 by John D. DeWitt, Jr.

Notary Public

My Commission Expires:

TERESA A. WALKER
Notary Public, State of Texas
My Commission Expires
June 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2015, I caused a true and correct copy of the foregoing Memorandum in Opposition to J.P. Furlong Co.'s Motion for Continuance, with attached Exhibit "A" - Affidavit of John D. DeWitt, Jr., to be sent electronically (where e-mail addresses are indicated) and/or mailed, postage pre-paid, to the following:

Stephen F. Alder, Esq. Assistant Attorney General Attorney for the Division of Oil, Gas and Mining 1594 West North Temple, Suite 300 P.O. Box 145801 Salt Lake City, UT 84114-5801 E-mail: stevealder@utah.gov	Michael S. Johnson, Esq. Assistant Attorney General Attorney for the Board of Oil, Gas and Mining 1594 West North Temple, Suite 300 P.O. Box 145801 Salt Lake City, UT 84114-5801 E-mail: mikejohnson@utah.gov
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Frederick M. MacDonald, Esq.